

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS SAN ANGELO DIVISION**

**TORIBIO MUNGUA and
KATHY MUNGUA**

v.

**AUTOZONE TEXAS, L.P.
AUTOZONE, INC., and
AUTOZONERS, LLC**

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Civil Action No. 6:09 CV-00023-C

**DEFENDANTS MOTION TO COMPEL
ARBITRATION & STAY PROCEEDINGS PENDING ARBITRATION**

Defendants ask the court to compel Plaintiffs, Toribio Munguia and Kathy Munguia to enter into arbitration and to stay the lawsuit pending resolution of the arbitration proceeding.

1. Plaintiffs are Toribio Munguia and Kathy Munguia; Defendants are AutoZone Texas, L.P., AutoZone, Inc., and AutoZoners, LLC.
2. On February 5, 2009, Plaintiffs sued Defendants for personal injury in Brown County, Texas. Defendants subsequently filed Removal on February 27, 2009, in the Federal District Court for the Northern District of Texas.
3. This case has not been set for trial or a hearing at this time.
4. Defendant, AutoZone Texas, L.P., AutoZone, Inc., AutoZoners, LLC, ask the court to compel Plaintiffs, Toribio Munguia and Kathy Munguia to arbitrate because Plaintiff Toribio Munguia claims that he was injured while in the employ and on the premises of Defendants. Plaintiff Toribio Munguia alleges that he suffered severe injury including injury to his elbow, lower back, and right knee. Plaintiff Kathy Munguia claims a loss of consortium. Plaintiff Toribio Munguia signed an agreement to arbitrate all work related injuries subject to an ERISA Plan.

Pursuant to the Texas Workers' Compensation Act, injuries that occur in the course and scope of an employee's employment are compensable only under the provisions set forth in the Act. TEX. LAB. CODE §408.001. Pursuant to Section 406.002 of the Act, coverage and subrogation to the Act is elective. AutoZone is a nonsubscriber to the Texas Workers' Compensation System and has been at all times relevant to this case. *See* Employee Benefit Plan comprising the Appendix filed with this motion. Instead, AutoZone has implemented

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the AutoZone Texas Occupational Injury Benefit Plan, which provides for medical treatment and other benefits to employees injured in the course and scope of their employment. *See id.* Under the Plan, both the employer and employee are required to arbitrate disputes arising from claims under the Plan. *See Appendix pages 28-32.* Furthermore, according to the Plan, all legal or equitable claims or disputes relating to enforcement or interpretation of the Plan shall also be arbitrated. *See Appendix page 29.* Plaintiff Toribio Munguia was informed of the arbitration agreement in the Plan and acknowledged his consent to same upon being employed with AutoZone on or about July 17, 2007. *See Acknowledgment Form, page 78 of the Appendix filed with this Motion, signed by Plaintiff.*

Therefore, Plaintiffs and Defendants entered into an agreement to arbitrate disputes of the nature for which the Plaintiffs now sue. Plaintiff Toribio Munguia was made aware of the arbitration agreement upon his acceptance of employment with AutoZone and has not, in his Original Petition, denied the existence of same. Furthermore, the scope of claims required to be arbitrated by the Plan extends to any claims that could be brought by his spouse, alleged to be Kathy Munguia. *See Appendix pages 29, 78.* Additionally, Plaintiff Toribio Munguia has refused to abide by the arbitration agreement with which he agreed, as evidenced by the filing of this lawsuit in Texas State District Court. The Plan also directs that all disputes which must be litigated be filed in the Dallas Division of the Federal District Court for the Northern District of Texas, (*See Appendix page 31*).

Conclusion

Wherefore, for these reasons, Defendant, AutoZone Texas L.P., AutoZone, Inc., and AutoZoners, LLC, ask the court to grant the motion to compel arbitration and stay the lawsuit pending resolution of the arbitration proceeding.

Respectfully submitted,

By: /s/ Henry S. Wehrmann

HENRY S. WEHRMANN
Texas Bar No. 21076400
9330 L.B.J. Freeway, Ste. 1400
Dallas, Texas 75243
Tel. (972) 231-6001
Fax: (972) 231-7004

OF COUNSEL
Stradley & Wright

**ATTORNEY IN CHARGE FOR
DEFENDANTS**

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CERTIFICATE OF SERVICE

I certify that a copy of Defendant's Motion to Compel Arbitration and Stay Proceedings Pending Arbitration was served on David Criss, who is the attorney in charge for Plaintiffs, and whose address and telephone number are Law Office of David Criss, 4925 Greenville Avenue, Suite 950, Dallas, Texas 75206, (214) 691-0003, by First Class U.S. Mail, certified return receipt requested on March 4, 2008.

By: /s/ Henry S. Wehrmann
HENRY S. WEHRMANN

CERTIFICATE OF CONFERENCE

I certify that on March 2, 2009, I conferred with David Criss, and he does oppose Defendant's Motion to Compel Arbitration and Stay Proceedings Pending Arbitration.

By: /s/ Henry S. Wehrmann
HENRY S. WEHRMANN